

24 October 1950

To: Walter L. Pforzheimer

From:

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Subject: Effect of McCarran Bill on "100 aliens" Proviso

1. This memorandum is in response to your verbal request for a study on the effect of Section 22 of the Internal Security Act of 1950 (the McCarran Bill) upon the so-called "100 aliens" proviso of Public Law 110.

2. Legislative History of Section 22. The legislative history of Section 22 of the McCarran Bill begins with Senate Bill 1694, 81st Congress, 1st Session. S. 1694 was superseded by S. 1832, introduced on 11 May 1949, by Senator McCarran. Hearings on S. 1832 were held before the Subcommittee on Immigration and Naturalization of the Committee of the Judiciary, from May through September of 1949. The committee report (No. 2230) was submitted to the Senate on 2 August 1950, and S. 1832 was passed by the Senate with little debate on 9 August 1950; however, S. 1832 was not passed as such by the House, but its provisions are embodied in Section 22 of the McCarran Bill.

3. Section 8 of the CIA bill follows:

Whenever the Director, the Attorney General, and the Commissioner of Immigration shall determine that the entry of a particular alien into the United States for permanent residence is in the interest of the national security or essential to the furtherance of the national intelligence mission, such alien and his immediate family shall be given entry into the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws and regulations, or to the failure to comply with such laws and regulations pertaining to admissibility: Provided, That the number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed one hundred persons in any one fiscal year.

4. Section 22 of the McCarran Bill provides, inter alia, for the exclusion of many classes of aliens, and the following excerpt, while it is merely a standardized clause, is of utmost importance in this problem:

"Sec. 9 Any statute or other authority or provision having the force or effect of law, to the extent that it is inconsistent with any of the provisions of this Act, is hereby expressly declared to be inapplicable to any alien whose case is within the purview of this act."

5. It is readily apparent that the controlling factor is whether or not the "100 aliens" proviso is "within the purview" of the quoted section of the McCarran Bill. One of the best indications that it is NOT "within the purview" is the following portion of a statement submitted by Senator McCarran on the floor of the Senate:

"Mr. President, the limited authority the Government now has to offer asylum in our country to such persons is not disturbed by Section 22 of this bill. Furthermore, as I pointed out during debate on this bill on the floor of the Senate, the legislation recently passed by the Congress permitting the admission of up to 100 aliens per year for intelligence reasons is not repealed or otherwise affected by H.R. 9490" (Congressional Record of 23 September 1950, page 15817.)

The above statement was made during debate on the President's veto message. Senator McCarran requested that his analysis of the veto message be printed in the Congressional Record. His analysis was printed and the quotation is the Senator's reply to the President's criticism of Section 22.

6. Effect of McCarran Statement Upon a Court. By repeated decisions of the Supreme Court it has come to be well established that debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body.

Aldridge vs. Williams, 3 How. 9, 24;

United States vs. Union Pacific R. Co., 91 U. S. 72, 79;

United States vs. Trans-Missouri Freight Assn., 166 U. S. 280, 318.

However, reports of committees stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of the statute is obscure. This line of reasoning has been expanded to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in the course of passage.

Pennsylvania R. Co. vs. International Coal Mining Co., 230 U. S. 184, 198;

United States vs. St. Paul M. and M.R. Co., 247, U. S. 310, 318;

United States vs. Coca-Cola Co., 241 U. S., 265, 281.

Inasmuch as Senator McCarran was in charge of the bill, and since his statement could be considered in the nature of a supplemental explanatory report, it is reasonable to believe that even a court would consider his words as an indication of legislative intent. There are numerous cases which could be cited in support of this position.

7. Effect of McCarran Statement upon the Attorney General. Since any controversy in this matter probably will be settled by conference rather than by a court, it is necessary to consider the probable effect of the McCarran statement upon the Attorney General. The undersigned knows of no valid reason the Attorney General could give for a refusal to consider the words of Senator McCarran. When a court states that a floor debate is not a reliable guide to the meaning of a statute, two reasons are often advanced. One reason is that words are spoken hastily in a debate, with insufficient reflection upon their meaning. This reason should have no bearing upon our problem, because the words quoted above were taken from a prepared statement of Senator McCarran. The other reason often advances is that the law as passed represents the majority view of the Congress and the words spoken previously do not. This reason should have little bearing upon our problem, because

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the statement of Senator McCarran was made to explain the future operation of the Act to the legislators. President Truman, in vetoing the law, had stressed its effect upon the nation's intelligence services. Senator McCarran's statement was in rebuttal to the veto message, and he explained that the law would not affect the "100 aliens" proviso. The law was passed shortly after the Senator had so explained its meaning.

8. Committee Reports and Hearings. There is no reference to the "100 aliens" proviso in Senate Report No. 2230, which accompanied the introduction of S. 1832. The same is true of House Report No. 3112, which is the conference report on the McCarran Bill. As yet the undersigned has not read all of the testimony presented at the hearings on S. 1832, but he has examined all of the testimony of all U. S. officials and found no reference to the "100 aliens" proviso. This is at least some indication that the committee did not consider Public Law 110 "within the purview" of the McCarran Bill.

9. Substitutes for the McCarran Bill. S. 4061, the so-called "administration substitute," contained no reference to the "100 aliens" proviso, and therefore the defeat of this measure cannot be construed as an argument against our position. The same is true of another substitution, S. 4130, the so-called Kilgore Bill, which was defeated also.

10. Other Arguments. The following are additional arguments to indicate that Congress did not consider the "100 aliens" proviso "within the purview" of the new bill:

a. "Subversive" Argument. The entire McCarran Bill is aimed at the control of subversive activities. This is evident from a reading of the legislative findings in the Act itself. More specifically, Section 22 is aimed directly at subversives. The hearings (on S. 1832) and the committee report (No. 2230) contained numerous references to subversive aliens. Public Law 110, on the other hand, is designed to assist aliens who have been of assistance to the national security of intelligence mission. Therefore, it is reasonable to conclude that the McCarran Bill does not affect the "100 aliens" proviso.

b. "Discretion" Argument. The committee which formulated Section 22 is on record as favoring more discretion for those who are charged with administering the laws relating to the entry of aliens into this country. (See page 27 of Senate Report No. 2230). Since Public Law 110 places discretion regarding the "100 aliens" in the hands of the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration, there is reason to believe that proviso meets with the approval of the committee.

c. "Exceptions" Argument. Senate Report No. 2230 includes a special reference to "four exceptions" in the immigration law prior to the enactment of the McCarran Bill. (See page 19 of the Report)

Public Law 110 is not mentioned among these exceptions, indicating it may be sui generis as far as the committee is concerned. Perhaps the phrase, expressio unius est exclusio alterius, is applicable here. At any rate, this is at least some indication that the CIA Act is not "within the purview" of the new law.

11. Additional Floor Debate. In addition to the statement of Senator McCarran quoted above, the following are pertinent excerpts from Senate debate. The statements are taken from pp. 15473-4 of the Congressional Record of 20 September 1950, and were made during a debate on the conference report on the McCarran Bill.

Mr. Graham. Next I refer to Section 22, subsection (2) on the same page. It would exclude from the United States

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes - -

and so forth. Suppose a person who had been a Communist had had a real sincere conversion; perhaps he had been in the diplomatic service of the Soviet Union, and he wanted to seek asylum in the United States. It seems to me the security officers of the United States would like, for purposes of information, for example, to let him in. I am thinking of men like Kravchenko, who wrote "I Chose Freedom."

Mr. McCarran. I think I anticipate the Senator's question. Let me say that under existing law the Attorney General can admit such an individual.

Mr. Graham. It takes from the Secretary of State the discretion which he formerly had. Does it not also take from the Attorney General his discretion?

Mr. McCarran. No. The existing law leaves it in the Attorney General's discretion.

Mr. Graham. I have read the report hurriedly since I received it only a little while ago. It seems to me that it not only takes such a matter out of the hands of the Secretary of State to give his approval, but also takes the discretion away from the Attorney General who might wish to have such a person come here.

Mr. McCarran. No; he can admit him unless he finds that the admission of the individual would endanger the security of the United States.

Mr. O'Connor. May I ask the Senator a question which I think might serve to clarify one phase of the matter brought up by the Junior Senator from North Carolina? He referred to the fact that the conference report does not disclose any change with reference to the presently existing provision permitting the Attorney General to allow to come into the country persons who may fall into these categories. Is it not a fact that that provision or law was not subjected to any change, and therefore remains on the books, hereafter as it was before so that the

Senate will not find it in the conference report, but that that discretion will still remain in the Attorney General?

Mr. McCarran. The Senator is correct. I may say that we brought that very thing up in the Committee on the Judiciary.

CONCLUSION:

While the McCarran Bill includes certain stringent provisions for the exclusion of aliens, it is the view of the undersigned that Congress in passing that legislation did not intend to invalidate the "100 aliens" proviso of Public Law 110.



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